## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff

V.

JESUS DIAZ-CORREA (2),

Defendant

Criminal No. 08-0330 (ADC)

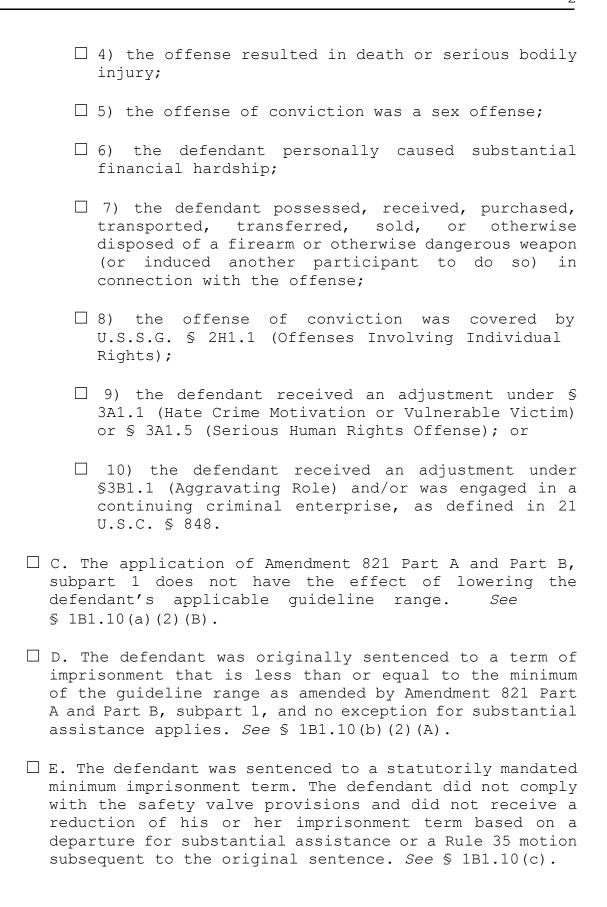
## MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION Re: Amendment 821

The below report and recommendation relates to an initial determination as to the defendant's eligibility for a sentencing reduction promulgated by the United States Sentencing Commission under Part A and Part B, Subpart 1 of Amendment 821 to Policy Statement § 1B1.10(d).

After careful review of the defendant's presentence report, charging document(s), plea agreement, plea supplement, judgment, and statement of reasons, I recommend that:

## $\boxtimes$ The defendant is <u>not</u> eligible for a sentence reduction based on the following factor(s):

- ☑ A. The guidelines range that applied in the defendant's case was not determined by U.S.S.G. § 4A1.1(d) or defendant's status as a zero-point offender under Chapter 4, Part A.
- $\square$  B. The defendant does not meet <u>all</u> of conditions specified by § 4C1.1. Specifically, one or more of the following criteria applies:
  - ☐ 1) the defendant has criminal history points from Chapter Four, Part A;
  - ☐ 2) the defendant received an adjustment under U.S.S.G. § 3A1.4 (Terrorism);
  - ☐ 3) the defendant used violence or credible threats of violence in connection with the offense;



Since a determination of ineligibility has been made, the matter is formally submitted to the presiding District Court Judge. Defense counsel, whether retained, appointed, or pro bono, has fourteen days to object to the initial assessment of ineligibility. After the fourteen day period, and in the absence of an objection by defense counsel, the presiding District Court Judge may adopt the recommendation of the Magistrate Judge and may rule on the motion for reduction of sentence.

☐ The defendant <u>may be</u> eligible for a sentence reduction and therefore the matter is referred to a United States District Judge.

The presiding judicial officer shall wait for the parties' stipulation of a sentence reduction within fourteen days. If no stipulation is reached within this period, the presiding judicial officer shall wait for the United States Probation Office, defense counsel, and the Government's memoranda, which shall be filed within another fourteen days.

## Reasons:

Diaz-Correa was sentenced at offense level 38, Criminal History Category IV. Even though the PSR (Dkts. 1455) reflect his Criminal History Category should be V, the court gave defendant the benefit of not including the two criminal history status point for committing the offense while under a criminal justice sentence. (Dkt. 1599 at p.42). As such, the guidelines range that applied in the defendant's case was not determined by U.S.S.G. § 4A1.1(d).

IT IS SO RECOMMENDED.

In San Juan, Puerto Rico, this 29th day of February, 2024.

s/ Bruce J. McGiverin
BRUCE J. McGIVERIN
United States Magistrate Judge